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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

LEROY S. ROBINSON, JR. Appellant, v. ROBERT A. McDONALD, Secretary of Veterans Affairs, Appellee.	Vet.App. No. 15-715
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NOTICE TO THE COURT OF RELEVANT INFORMATION

Pursuant to this Court's May 3, 2013 ruling in *Solze v. Shinseki*, 26 Vet. App. 299 (2013), Appellant, through his counsel, informs the Court of relevant information which could affect this Court's deliberations, as related to Appellee's August 24, 2016 pleading which purports to be a Response to the July 14, 2016 Order of the Court.

On August 10, 2016 the Court ordered the Secretary to 1) file a motion for leave to file, out of time, a response to the Court's July 14, 2016 Order; 2) submit his response

and 3) explain why he did not file a timely response and why the Court should not impose sanctions for failing to comply with an order of the Court.

On August 17, 2016, the Secretary filed his motion along with his response to the Court order which response has been received, but not yet accepted for filing as of this date. Appellant notes that the Secretary has on this date filed a document which purports to be a response in compliance with the Court's July 14, 2016 court order.

However, as the Appellee's August 17, 2016 response had not yet been accepted for filing, it would appear that Appellee's response filed on this date is premature.¹ In the event the Appellee's late Response is accepted for filing, Appellant will timely comply with the Court's July 14, 2016 Order by filing his response within 7 days of the filing of the Secretary's response to the Court's order.

As the court ordered in *Solze*, both parties have a continuing duty to bring to the court's attention any facts or development which *may conceivably affect an outcome*. *Id.* at 302.

Cf. Douglas v. Donovan, 704 F.2d 1276, 1279 (D.C. Cir. 1983) ("As officers of this court, counsel have an obligation to ensure that the tribunal is aware of significant events that may bear directly on the outcome of litigation.").

Given that the Secretary has filed a response, in part, stating: "Notably,

¹ In light of the Court's August 10, 2016 Order, the Appellant appreciates that the Secretary would now appear to be motivated to comply with this Court's Order. Thus, the Secretary's zeal to comply may have led to his premature filing of this date.

subsequent to the issuance of the July 14, 2014, Order, both before and after August 10, 2016, the Office of General Counsel corresponded with Appellant's counsel by email, answered her questions, and kept her informed of its progress in making Appellant's paper source documents available to her." The representations are so mis-leading that Appellant feels compelled to respond.

As to communications after July 14, 2016 and prior to August 10, 2016 Appellant is compelled to respond at this time to direct the Court to his August 5, 2016 response, page 6, where he states: 1) that he received a "cryptic" two sentence response from the Secretary and 2) heard nothing more from the Secretary until he received an email from him stating that the Secretary would be filing for a stay. As to any communications after August 10, 2016: the Secretary's counsel, Thomas Sullivan, Esq. and Appellant's counsel communicated via email on August 11, 2016. On that day, Appellant's Counsel reiterated her request that her contact information be provided to the RO and that Mr. Sullivan provide her with the contact information of the staff at the RO. Appellant's counsel was not provided with contact information. On August 12, 2016, Appellant emailed Mr. Sullivan again to insure that he was coordinating the file review with the RO and to insure that there would be no problems. The General Counsel did not respond to this email. Appellant's Counsel heard nothing more on the file review until the morning of August 23, 2016 when she, once again, contacted Mr. Sullivan. to advise him that no one from the regional office had contacted her. It was only at 4:40 p.m. on

August 23, 2016 that she received a phone call from Mr. Younger at the Philadelphia RO.

Respectfully, Appellant contends that, for Mr. Greenstein to “spin” the facts in a manner which makes it “appear” that the General Counsel has “corresponded by email,” “answered her questions” and “kept her informed of its progress in making Appellant’s source documents available to her” is simply disingenuous. In fact, the Appellant has been compelled to respond to similar contentions of this Assistant General Counsel in the past.²

Appellant’s counsel wishes to make clear that there has been minimal, if any, contact from the Secretary. Any efforts of the Secretary to revive this short-coming constitutes nothing than Monday morning quarter-backing.. Moreover, none of these efforts could alleviate the Secretary’s obligation to comply with the July 14, 2016 court order which required him to correspond with the Court. Two wrongs do not make a right.

² This is not the first time Mr. Greenstein had placed a “spin” on the facts and mis-characterized things in the past. See the Appellee’s August 10, 2015 Response to the July 9, 2015 Court order and Appellant’s August 13, 2015 response where Appellant makes clear that Mr. Greenstein’s statements are inaccurate.

Wherefore, Mr. Robinson respectfully notifies this Court of significant facts and developments which could be relevant to the Court's deliberations in this matter.

Respectfully Submitted,

/s/Tara R. Goffney

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Leroy S. Robinson, Jr.
Electronically submitted on August 24, 2016